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LAW ENFORCEMENT AND PUBLIC ADMINISTRATION*.

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In his introduction to perhaps the most significant recent scientific discussion of crime and society, a distinguished law professor says: "When any phase of crime control is talked about, the tendency has too often and too strongly been to emote instead of thinking."¹ We all recognize the truth of this statement; and the broadly inclusive nature of my title may not seem too promising, though I shall try to limit it strictly. This paper was originally planned as part of a course of lectures on "The Scientific Study of Law and Its Administration"—a subject suggesting the long-range dispassionate investigation, not propaganda or preaching, of law *administration*, that is, the day-to-day operation of the social machinery devised to apply the moral and ethical assumptions which we call "law" to the complexities of modern life. My particular topic, "Law Enforcement and Public Administration," was designed to stress, as a part of this general subject, the public aspects of crime control. "Public" should be emphasized, since it makes clear that the problem of crime control is essentially one of administration in a public or governmental sense. Hence it is just as much a problem of *public* law as is the operation of the governmental agencies, federal or state, now of immediate and popular interest, such as the law of administrative tribunals and commissions or that

* This paper was originally prepared as a lecture, given at the Brookings Institution in Washington, D. C., in February, 1935, as a part of a course on "The Scientific Study of Law and Its Administration." It has been revised for publication and the statistical data brought down to date with the latest information available.

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¹ K. N. Llewellyn, Introduction (p. xv) to Jerome Hall, *Theft, Law and Society* (1935).

fascinating realm of juristic dogma known as constitutional law. I propose to discuss therefore what should now be the direction of scientific study of criminal law administration in its public aspects.

In thus defining my subject I have carefully avoided use of the words "law enforcement." These words have served as a text for many a public exhortation, so that they are now essentially hortatory and emotive words. For this very reason they are not useful in our present endeavor. Recently one of my colleagues at Yale dealt with "Law Enforcement" in a law review article which he termed "An Attempt at Social Dissection."² He advanced the thesis that "Law Enforcement represents a reverently held ideal which has had its value in inducing a feeling that criminal justice is both impartial and impersonal—that principles instead of personal discretion control the actions of judges and prosecutors. To this feeling courts have owed part of their prestige and public acceptance of their sometimes unpopular acts." He noted further that the first important thing about Law Enforcement is "that while it always appears to be very closely related to the problem of public order and safety, actually it has very little to do with it. Its effect is rather on the public utterances of those interested in the criminal law and on the appearance of the judiciary to the public." Then he pointed out two very distinct problems of Criminal Administration (which he distinguished from Law Enforcement). The first is the keeping of order in the community, which is primarily a police and prosecutor's problem, little concerned with, and only incidentally affected by, any governmental philosophy. The second is the dramatization of the moral notions of the community, and with this the ideal of law enforcement becomes important. And he found many interesting contrasts between the somewhat mystic ideal that law—that is, all law—should be enforced, and the actual problems of crime control, involving large measures of discretionary power in the police and the prosecutor. Against the precept that law must be enforced, or otherwise government is flouted and people are lawless, is the necessary fact that prosecutor and police have an extremely wide choice as to the persons to be prosecuted and the offenses for which they should be prosecuted. The now well-known and all pervasive, though still somewhat disreputable, bargaining process, whereby the prosecutor adjusts the letter of the law to the equities, if not the exigencies, of the particular case, thus wars

² T. W. Arnold, *Law Enforcement—An Attempt at Social Dissection* (1932) 42 Yale L. J. 1, 6 et seq. Compare also his *Symbols of Government*, to be published in 1935 by the Yale University Press.

with the moral philosophy of law enforcement and the reconciliation of the two made necessary by the realities of the situation results in some neat verbal balancing.

Now, there was enough of shrewd analysis in this statement to annoy many people, who thereby proceeded to afford demonstration for the thesis. Thus many distinguished persons objected to the subversive point of view expressed, and particularly to the conclusion to which the article seemed to point, namely, to an even greater and perhaps franker use of discretionary power in prosecution by the public officials. This article, and the reaction to it, may serve to point to the gulf existing between the public attitude and the professional or scientific attitude towards crime. The latter does not recognize the popular phenomenon of the "crime wave," nor show the hysteria, morbid curiosity, avid interest, and even pleasure of the populace in the spectacular crime and the so-called "war on crime." It does see an age-old social problem which must be studied calmly and continuously, which must be met with new devices as the problem changes, in short which should stimulate the mind, not arouse the emotions. But the public interest in matters of crime in this country cannot be overlooked, for after all public sentiment does condition and determine all crime control. The Prohibition Amendment is, of course, a recent and a dramatic example of this fact. Nor ought we to treat it with scorn, but we should attempt to canalize it and make it useful. Certain important and necessary changes involving a shift in power from the smaller to the larger governmental units and on up to the central federal government are already taking place. Those and other steps will be easier of accomplishment because of this public interest.

Accompanying this attitude of the American people, perhaps as a direct result of it, is the fact that we have come to expect so much of our criminal law administration. I see essentially nothing which really demonstrates that crime control is less effective than formerly in this country. On the other hand, there are many hopeful signs, such as a certain number at least of very fine penal institutions or our more enlightened treatment of juvenile delinquents. But we are no longer content with locking up criminals; they must now be reformed and cured or else we have failed. And we constantly increase the number and extent of our crimes and give vent to our inveterate tendencies to regulate morals, habits of driving automobiles, operation of business or what not through the process of the criminal law. All this has happened in the main without corresponding increase in the enforcement forces or their

proper reorganization and unification in terms of the automobile age. Here again this general sense of failure and the widespread criticism of our law-enforcing officials, which has not been helpful in the past, should be capitalized to support the necessary development and expansion of the administrative machinery for the future.

It is interesting to compare our public attitude towards the menace of crime with the satisfaction of the English people in their own processes of criminal law administration. I shall make a few observations later as to the soundness of the current comparison between English and American law enforcement so disparaging to us and yet so eagerly accepted and proclaimed in this country. Now I am concerned with this difference in attitude. The English take for granted the capacity of their officials to deal with the crime problem. They find much less in their newspapers about lawlessness in general and they apparently demand less than do our readers. One may even conclude that they have greater interest, coupled with a proper pride of superiority, in the sagas of our gangster heroes than in stories about their own criminals. In the 45 direct wires from the little town of Flemington, New Jersey, made necessary by the Hauptmann trial (an increase from the former service by only the station agent and one messenger boy), there was one to London and another to Halifax.³ In fact, the English seem to show more jealousy in seeing that the rights of Englishmen are protected against over-zealous police activity than fear of being overwhelmed by gangsters, for the government may be faced with embarrassing questions in the House of Commons if police questioning is too vigorous.⁴ The public temper is therefore quite different from that which we meet in our so-called "organs of opinion."

How much this difference in attitude is due to the press, the moving pictures, and the radio may indeed be a fair question. All during the summer of 1934 we were treated to a constant history of the exploits of Dillinger and his gang, and in January, 1935, with national and international affairs at crisis, we found the Hauptmann case reported down to the minutest detail, almost to the exclusion of everything else. It appeared that 700 newspaper men descended on the little town, with 129 photographers and special writers galore, ranging from sports writers to book reviewers and novelists, 50 representing one chain of newspapers alone. No wonder 4,000 peo-

³ Marshall, *The Biggest Show on Earth* (1935) 140 *The Nation* 93.

⁴ Note the parliamentary inquiry into the questioning of Miss Irene Savidge after the acquittal of Sir Leo Money for improper conduct in 1928, referred to in Howard's *Criminal Justice in England* (1931) 149, 165, 231.

ple visited the court room on a Sunday merely to see the scene of this battle of a century. The circulation of one newspaper is said to have increased by 50,000, although it may be doubtful if a permanent increase offsetting the special expense incurred resulted.⁵ Finally we were about to be treated with movies of the trial, when the officials, apparently not altogether blameless in the matter, succeeded in inducing the producers not to show them. Before this ban went into effect my local paper was advertising the showing of these pictures as "The most sensational news scoop of all time," and exhorted all to "See Hauptmann and Prosecutor Wilentz battling to a terrific climax." Whether this exploitation of crime is cause or result of morbid public interest or a combination of the two, it is a most important factor. Here again, while a proper regard for public dignity would suggest some regulation and restraint, I see little fruitfulness in attempts at direct prohibition. We need to turn this interest to good account by giving it something to thrive upon, rather than to undertake the task, impossible and probably undesirable, of killing it off. The general interest in and support of the recent activities of the federal government may be taken as some indication of the way in which public opinion may be roused to the support of an active program of crime control.

The English attitude to which I have referred is well set forth by Professor Pendleton Howard in his informing monograph "Criminal Justice in England." He has this to say:

"The Englishman, unlike the American, is on the whole complacent about the operation of his system of criminal law enforcement. He is, in truth, not a little proud of the fact that his machinery for administering the criminal law is very largely the cumulative product of ages which had little in common with the whirling civilization of the twentieth century. He likes to tell the foreign visitor that his is an old-fashioned country, which does things in an old-fashioned way—or, as he would put it, a 'comfortable way'—which involves as little break as possible with the past. . . . An American efficiency expert would doubtless be appalled at the lack of a uniform method of conducting prosecutions and would immediately set out to tinker with existing arrangements. The Englishman does nothing of the sort because, despite an occasional scandal, the system seems somehow to work and he is not greatly interested in learning how it works or why it works. At all events he grows melancholy at the thought of changing it. The pragmatic test is for him sufficient."⁶

This may be contrasted with the frequent quotation of former

⁵ Marshall, *loc. cit. supra* note 3. Cf. the criticism expressed in the Report of the Committee on Co-operation Between Press and the Bar to the Conference of Bar Association Delegates (A. B. A., 1935) pp. 9-11 of Tentative Program and Committee Reports, to which criticism the state prosecutors took strong exception.

⁶ Howard, *op. cit. supra* note 4, at 93, 94.

President Taft's statement to Yale law students nearly thirty years ago ("I grieve for my country to say the administration of the criminal law in all the States of the Union [there may be one or two exceptions] is a disgrace to our civilization")⁷ or the constant references to the "breakdown of law." Note the preamble to the official resolutions adopted by the Attorney General's Crime Conference held in Washington, D. C., last December as follows:

"There has been presented at this Conference overwhelming evidence of an intolerable breakdown of law and order throughout the country. It is inconceivable that this Nation can continue to permit murders, pillaging, and racketeering with impunity."⁸

As a matter of fact, a sober scientific comparison, so far as the data are available, of the criminal law administration of the two countries might furnish information valuable and important in suggesting further leads both for study and for action, but would not, I believe, demonstrate the overwhelmingly greater success of England, compared to our country in general and not to selected examples, in coping with crime. Statistical comparisons here are popular and interesting, though perhaps not wholly convincing, since the statistical material, particularly in this country, is limited. There is, however, a steadily accumulating amount of data, well justifying careful research studies and comparisons. One needs both caution and sophistication, however, in dealing with judicial statistics, for one can get weird and fascinating ideas from them. At the Attorney General's Crime Conference a very distinguished speaker stated that the homicide rate in our country was twenty-one times that of England. A later speaker was quite distressed at this statement, for he had planned to say that the homicide rate in this country was *three* times that of England, and he was faced with the dilemma of either producing a dismal anticlimax or of giving figures for whose authenticity he was not prepared to vouch. Faced with such a dilemma, what was a public speaker to do?

Now I have been re-examining the judicial statistics of the two countries, partly because of a long-continued interest in the problem of ascertaining the facts of law administration and partly to obtain

⁷ W. H. Taft, *The Administration of Criminal Law* (Address at Yale Law School, June 26, 1905) 25. See also (1905) 15 Yale L. J. 1.

⁸ (1935) 21 A. B. A. J. 9. As a member of the Committee on Resolutions which presented this statement to the Conference, perhaps I ought, by way of apology, to explain my misgivings lest the statement should be understood as a general conclusion applicable all over this extensive country and suggesting some better time in the past, and express my hope that it will be accepted as referring to specific recent instances of a particularly dramatic and publicized nature, and thus justified as an exhortation to the country for affirmative action along the lines recommended by the Conference. These affirmative recommendations I consider most hopeful, as I point out below.

specific material for this paper, and I think I have found the data upon which the statement was based. A regard for scientific accuracy leads me to express my conclusions here with the greatest diffidence, for the figures are subject to so many interpretations as easily to vitiate the results and I present them mainly for what they may suggest, rather than as proving the facts asserted. A comparison of the statistics in the tables of Crimes Known to the Police in England—the official records collected for the Home Department—and the Uniform Crime Reports, the voluntary reports of police chiefs of many American cities tabulated by the Bureau of the Census, does point to a striking discrepancy between the English and American homicide rate.⁹ It would seem, however, that certain modifications should be made and questions suggested before the comparative figure is completely accepted. First, a combination of some items separately listed in the English reports should probably be made. Second, some exploration of the classification in England of attempted suicides and of suicides, as well as of accidental deaths, categories for which there are no American counterparts in the Uniform Crime Reports, should be made to ascertain, for example, if an attempted homicide might appear as an attempted suicide, or an actual homicide as an accidental death. Further, it should be noted that the English figures cover the entire country, thus including rural as well as metropolitan areas, whereas those from the United States are only from important metropolitan areas, including some Southern cities with an unusual number of homicides. Doubtless other queries may present themselves. Making all due allowance, however, for these qualifications, the margin of difference is so great as to suggest as a possible hypothesis that the English homicide rate is substantially less than our average and also lower than that of France. But here, too, the wide variation among the different American cities should be noted. Thus, the Southern cities generally show the higher homicide rates, with Birmingham, Alabama, often the leading one, containing roughly about four times the homicide rate of Washington, D. C., and about twelve times the almost infinitesimal rates of states such as Vermont and New Hampshire, and with many places below the English rate. The dangers of comparing a closely-knit-together country such as England with our far-flung territory, containing many wholly different kinds of communities, should be obvious.

⁹ Cf. CRIMINAL STATISTICS, ENGLAND AND WALES (1932) 20, with UNIFORM CRIME REPORTS (U. S. Bureau of Investigation, Fourth Quarterly Bulletin, 1932) 4. Cf. also (1932) 48 *Annuaire Statistique* (France) 92. See further Louis I. Dublin and Bessie Bunzel, *Thou Shalt Not Kill* (1935) 24 *Survey Graphic* 127-132 et seq.

If, however, there is a discrepancy here, what does it show? Not necessarily, of course, that there is a breakdown of law enforcement or a reign of lawlessness, only perhaps that we have a more difficult problem in this country as to the taking of human life. But our inquiries should include also the lesser but much more numerous crimes. As to some of these at least we can produce some amazing results. Thus, as to larcenies and simple thefts generally, the English rate of crime seems to be about *four* times that of these reporting American cities.¹⁰ These results are certainly startling and upsetting enough to our current notions of crime comparisons between the two countries. As a matter of fact, however, the possibility of similar conclusions had already been pointed out by Professor Sam B. Warner of Harvard. In his vigorous criticism of the collection of statistics of "Crimes Known to the Police," he points out that differences in the statutory definitions of burglary in England, Canada, and the United States ought to cause the United States to report the most burglaries and England the least, and then says:

"In spite of this fact, the statistics of burglaries known to the police show that London has more burglaries than New York. Liverpool has 6 times as many as New York and more than Chicago, Detroit, Philadelphia, Boston, or Baltimore. Glasgow, the second largest city in Great Britain, reports more burglaries than any American city of over 500,000 except San Francisco, 14 times the number in New York and 4 times the number in Chicago or Detroit.

"Canadian cities report fewer, but only slightly fewer, burglaries known to the police than the average large city of the United States. Quebec has fewer burglaries than any large city in the United States, but no other sizeable Canadian city has fewer than New York, and only Quebec and Toronto have fewer than Chicago or Detroit."¹¹

Professor Warner was adducing these figures chiefly to support his argument that "crimes known to the police" is an uncertain category dependent for its content on the whim or deliberate plan of diverse police officers, and that court statistics, while limited in their showing of the amount of crime, at least have better promise of accuracy so far as they go. Perhaps the difference is due entirely to the possible capacity of the American police in their role as statisticians to overlook a great many thefts, which the English methodically tabulate. But the figures certainly provoke further inquiries and conceivably might upset our whole idea as to crime control in the two countries. At the very least they indicate that the English have serious problems of crime, differing in detail, but certainly

¹⁰ *Supra* note 9.

¹¹ Warner, *Crimes Known to the Police* (1931) 45 Harv. L. Rev. 307, 315.

not in total effect, from our own. Moreover, other figures, if reliable, indicate even more strikingly a comparable rate of success in the two systems as to apprehension of criminals. The rate here is quite similar and fluctuates in much the same way in the two countries, from about 80% of apprehensions to crimes committed in wilful homicide cases, and 90% in negligent manslaughter, down to 25 or 30% in theft cases.¹² May I again utter the warning that I do not advance these conclusions with any strong convictions as to the truthfulness of the exact figures, but merely as tending to indicate not wholly dissimilar conditions in the two countries.

There is, however, a striking difference in criminal law administration in the two countries which probably shows to a certain extent in the disposition of the various types of cases. That lies in the management of prosecution. With us this is a public matter throughout. In England, on the other hand, the legal theory still is that, save in special classes of cases, prosecution may be left to private persons who need not start action and have only recently been encouraged to do so by provisions, still inadequate, for repayment of costs.¹³ It is now true, of course, that a certain number of important cases are handled through the Director of Public Prosecutions, a division of the Home Department. But the largest total number of criminal cases are what are termed "police prosecutions," cases investigated and instituted by the police. Here we have the to us curious spectacle of the police engaging legal service for the conduct of their case (except in certain courts where the police or other officers may themselves question the witness in court). One should recall, too, the well-known division of the legal profession in England, whereby appearance in court is limited to the barrister and he in turn is "retained" by the solicitor who prepares the case. And so the police may have their solicitor who retains such barrister as he chooses for the different cases, while in the private cases the complainant himself engages a solicitor, who then retains a barrister. As is obvious, a barrister may appear now on the side of the prosecution and in the next case on the side of the defense. With the increasing disposition of cases in courts of summary jurisdiction, where the barrister is not required, there is now a tendency to dispense with his services, but the system of private representation of the prosecution does temper the whole administration of criminal justice. Thus, private prosecutions may fail for lack of action by the complainant, and even in police prosecutions

¹² See tables in the reports cited *supra* note 9 and cf. World Almanac, 1935, at 280.

¹³ See Howard, *op. cit. supra* note 4, at 1 *et seq.*; Moley, *Politics and Criminal Prosecution* (1929) 193 *et seq.*

cases may appear where no barrister has been retained and the court appoints one.¹⁴ It is said, therefore, that many forms of crime, of the type particularly left to private initiative to prosecute, such as embezzlement and fraud, are not well prosecuted, since private individuals, and particularly banks and insurance companies, are interested in financial reimbursement, not in punishment.¹⁵

How different all this is from our system. We may criticize our police and our prosecutors, accuse them of graft, politics, inefficiency or what not, but apparently no one would question the system whereby a public official controls the case throughout and a private individual, even though the complainant, has no official status in the case except as witness for the public. True, the English seem to get along under their system and there is no real pressure to change it, only at most to extend somewhat the sphere of public prosecutions. When, however, we are lauding the English system of criminal justice, we might pause and ask ourselves whether we really are prepared to take over probably their most important principle. Would we not have to answer that, however well it may be suited to English habits, it is not one which would fit in at all with our ideas of the function of government, in short that it is not a politically realist proposal?

One result of the American system, however, has been to make the position of public prosecutor of outstanding importance in our system. He is the key figure in the ultimate direction of crime control, just as the police are the important figures in the apprehension of the criminal. In fact, we might sum up the problem of crime control as one of improved personnel of prosecutors and police. The many crime surveys show the very small function played by the court and the still smaller part played by the jury. An analysis of the reports of the crime surveys, prepared for the National Commission on Law Observance and Enforcement, showed in larger metropolitan areas, for example, that only 25 to 30% of the cases entering preliminary hearing proceeded as far as the trial court, and 60% or more of these were then settled by plea of guilt to the offense charged or a lesser offense.¹⁶ The Bureau of the Census is now collecting statistics of state criminal trials in the trial courts of general jurisdiction. This means that the figures do not cover the vitally important activities of police courts and committing magistrates, but only cases entering the trial court by appeal or binding-over process, or bench warrant direct from the court. Even

¹⁴ Howard, *op. cit. supra* note 4, at 217.

¹⁵ *Id.* at 395.

¹⁶ Bettman, *Criminal Justice Surveys Analysis* (Rep. No. 4, National Commission on Law Observance and Enforcement, 1931) 45, 186 *et seq.*; Moley, *op. cit. supra* note 13, at 27 *et seq.*

with these eliminations the results in 1933 of over 131,000 cases from twenty-four quite separate jurisdictions from Arizona to Wyoming indicated about a quarter (36,832) disposed of without prosecution (the greater number being dismissed by the prosecutor), three per cent (3,170) found guilty of a lesser offense, and the remaining almost three quarters (91,006) found guilty as charged, more than half of the total number of all the cases (56.5%-74,131) on plea of guilt. The court in jury waived cases found 6.9% (9,163) guilty and acquitted 2.9% (3,835); while the jury found 6.6% (8,729) guilty and acquitted 6.1% (8,020).¹⁷ Now these figures, both because they refer to the more important crimes and because they include several states where no provision is made for jury waiver and court trial, undoubtedly overemphasize the use of juries and the number of trials. In my own state, for example, of these important appealed or bound-over cases, only about 13% resulted in trials in the two years just closed. Of these juries convicted less than one quarter and acquitted one thirteenth (3% and less than 1% respectively of the total cases); while judges convicted about one half and acquitted about one ninth (6½% and 1% respectively of the total cases). The majority of the remainder were disposed of on plea of guilt, although 20% were nolle by the prosecutor.¹⁸ And these are only the important cases sifted out of the grist before the police courts. In fact, in our most populous county—Hartford—the jury trials in the Superior Court are only three or four a year. The real administration of crime clearly comes before the judge and jury are approached.

Notwithstanding this relatively small role of judge and jury in the administration of criminal justice, most of our reforms to date have been directed almost exclusively toward improvement of this part of the process, with simpler pleading statements on the part of the prosecution and more detailed on the part of the defense, with waiver of jury and juries of less than 12, with comment on the failure of the accused to testify and safeguards of expert testimony and so on. In fact, until the recent Conference on Crime initiated by the Attorney General last December afforded a dramatic exposition of the whole process of crime control with emphasis upon police and prosecution, there seemed only sporadic attempts to readjust this overemphasis upon court procedure, although the facts have been clear at least from the first detailed crime survey, that

¹⁷ STATISTICS OF COURTS OF GENERAL CRIMINAL JURISDICTION (1933, released by the Bureau, April-June, 1935).

¹⁸ Reports of Connecticut Comptroller—Biennial Report of the Criminal Business of the Courts (1934).

in Cleveland published in 1922.¹⁹ I would not decry these attempts to reform criminal procedure. Certainly they are important so far as they go.²⁰ They do facilitate the trials that are had, the most publicized of all features of law enforcement, and thus the most important from the standpoint of the public attitude toward crime control. Further, they have a very considerable effect upon the temper which they give to the entire process of administration. If juries will not convict and courts will not sentence, the let-up of activities of both police and prosecutors is direct and immediate. Again, the Prohibition cases give the striking example of the effect of public sentiment on law enforcement reflected through the courts back to the prosecutor and the police.

Nor should the responsibility of the legal profession for crime conditions be underestimated. Improvement of the legal profession is vitally important, because it may condition the administration of justice very much more than the attitudes of particular juries in particular communities. The prosecutors are taken exclusively from the ranks of the lawyers. So are the judges. So are many of the court, prison and other officials. And so finally are the defendants' counsel. The fact that the racketeering criminal has been able to provide himself with expensive counsel has had a directly deleterious effect upon law administration. That is why the Association of American Law Schools since its foundation in 1900 and the American Bar Association have worked for a definite program of more rigorous standards for admission to the profession, a program which, considering the situation a decade ago, has met with substantial success. More than one-half the states, including over sixty per cent of the population, have now standards approximating those recommended by these organizations and less than one-third now have low requirements.²¹ Many of us feel that even this program does not go far enough and that we need to know as a first requisite for further steps more than we now know about the economic and social functioning of the bar today. So the Association of American Law Schools has been developing plans

¹⁹ The Cleveland Crime Survey, conducted by the Cleveland Foundation and published by that Foundation in 1922. See also Bettman, *loc. cit. supra* note 16, and Moley, *loc. cit. supra* note 13.

²⁰ The model Code of Criminal Procedure of the American Law Institute contains many recommendations of this kind, of which several have been officially supported by the American Bar Association and were recommended in the official Resolution of the Attorney General's Conference on Crime. See (1935) 21 A. B. A. J. 10; (1934) 20 *id.* at 647-654, and memorandum from Chairman of Section on Criminal Law, in Advance Program of A. B. A. (1935) 42-44.

²¹ Report of Section on Legal Education of American Bar Association (1934) 20 A. B. A. J. 662; (1935) 21 *id.* at 539, and in Advance Program of A. B. A., *supra* note 20, at 45-53.

for an extensive bar survey through its Committee on the Co-operation of the Bench and Bar,²² and the American Bar Association has awakened to the needs of a more representative and stronger professional organization.²³

Here we can note the advantage as to crime control of the English division of the legal profession into barristers and solicitors previously referred to. The whole force of English history, tradition, and present rule restricts court appearance to the aristocrats of the profession—the barristers—who in turn do not bargain directly with the client. That naturally means that court litigation, both civil and criminal, is conducted on a much higher, more gentlemanly, plane than with us, and the possibilities of partnership between lawyer and gangster greatly reduced, perhaps eliminated. The English bar, being aristocratic, shows both the advantages and disadvantages of any closed and favored group, but here with respect to crime at least we pay a price for democracy. The American Bar Association has just awarded a prize for an essay on "The Barrister and the Solicitor in British Practice: The Desirability of a Similar Distinction in the United States." The winning essay properly points out, however, the difficulty, if not practical impossibility, of adopting a plan so alien to our traditions for operation in this country.²⁴

But we can well turn to prosecutor and police as the most important links for immediate consideration. The peculiar problems to be faced in this country should not be minimized, however. Outstanding among these is that presented by the wide expanse of our territory. England is a small island, and it is extraordinarily easy to watch steamship lines. The possibilities of escape are much more remote there than here, where in a few hours, if not a few minutes, the criminal in a high-powered car may pass into the territory of another sovereign. The historic division of our country into independent states is most hampering in preventing the necessary centralization of crime control for efficient results. If the criminal

²² Cf. C. E. Clark, *Law Professor, What Now?* (Address in Handbook of the Association of American Law Schools, 1933) 14-23, (1934) 20 A. B. A. J. 430; also other addresses and vote of the Association, in Handbook, *supra*, at 33-66, 125, (1934) 7 Am. L. School Rev. 1009, 1017-1039, 1116; also Report of Committee on Co-operation With the Bench and Bar, in Handbook (1934) 88-100, (1935) 8 Am. L. School Rev. 138, and Symposium on Bar Surveys, in Handbook (1934) 58-100, (1935) 8 Am. L. School Rev. 116. A report of a preliminary survey made on behalf of the Committee is in course of preparation. See also Garrison, *A Survey of the Wisconsin Bar* (1935) 10 Wis. L. Rev. 131.

²³ This movement, which has been developing for some time, is reported in current issues of the American Bar Association Journal, and the addresses and votes taken at the last annual meeting of the Association are reported in (1935) 21 A. B. A. J. 522-534, 541, 544-549.

²⁴ See Wham, *The Barrister and the Solicitor in British Practice: The Desirability of a Similar Distinction in the United States* (1935) 21 A. B. A. J. 486.

crosses that imaginary line which constitutes the state boundary, an intricate time-consuming process of official request from one sovereign to another, that is, from one governor to another, must be gone through, with apprehension of the person sought now in the hands of an entirely different police force. In addition, the federal government, with its increasing list of federal crimes, operates an entirely separate criminal control establishment but in the same areas occupied by the state. Not content with this disorganization of law enforcement, we have carried the process of decentralization so far that we have our separate town and city police forces and courts of first instance. My own home is not a long walk from my office and yet in making it I pass from one judicial establishment to another, with separate police courts and police. In Boston, we are informed by Mr. Leonard Harrison's informing monograph—part of the Harvard Crime Survey of Boston—on "Police Administration in Boston" that within a radius of 15 miles from Boston Common there are forty cities and towns with forty independent police systems. Mr. Harrison says:

"The city of Brookline is almost entirely surrounded by Boston. The boundary line between the two cities passes through some residences. Thus when a burglary occurs, it makes a difference which side of the house has been entered. If from the rear, a Boston policeman must be called; if from the front, a Brookline one. The city of Cambridge extends almost to the very center of Boston, and is flanked on two sides by the Brighton and Charlestown sections. A person who boards a trolley car at Harvard Square in Cambridge can, for a single fare, ride through a half-dozen separate police jurisdictions. Citizens have been known to discover crimes in Cambridge and to run for a policeman, only to find that the first one encountered belonged to the Arlington, or Belmont, or Watertown department, and had no authority to handle crime complaints in a 'foreign' city."²⁵

If these separate units were combined into a single one, the area would still be less than two-thirds, with less than one-quarter of the population, of London. The idea of even a metropolitan police, that is, a police force which covers not merely the official limits of a city, but the metropolitan district which is for all intents and purposes an integral part of the life of the city, is unfortunately still new and substantially untried. In addition to the disorganization, the increased cost due to these overlapping systems is apparent. It serves, too, to intensify the already large discrepancy between the amounts expended to apprehend a famous criminal and the appropriation for ordinary police administration.

But there is the additional difficulty of the diverse character-

²⁵ Leonard Harrison, *Police Administration in Boston* (Harvard Law School Survey of Crime in Boston (1934) vol. III, p. 159).

istics of the population within a single police unit. I have already pointed out the unusual homicide rate of many Southern cities as compared with Northern areas. The presence of the negro and the whole racial problem therein involved is one of extraordinary difficulty. I live in one of the largest of Italian cities (New Haven), while New York is a combination of all the races of the whole world. And the police service to date has been peculiarly a product—one might almost say a by-product—of municipal government, probably least successful of all our governmental units. Traditionally here is where graft and political favoritism are most rife. But here is where we expect to lay the real foundations of an adequate system of crime control. And to these difficulties may be added the further ones already cited of defects in the legal profession and morbid public interest in crime.

What are the steps of immediate improvement? A simple answer can be made, one most difficult of execution. Beyond a better and more informed public attitude, a better, more capable and more honest bar, is the need of better and abler prosecutors, and, perhaps still more, of better and more intelligent police officers. The cry for better men is an old one. There is no absolute answer to it, but it is possible to obtain certain gains by improved methods of selection and training.

Now as to the prosecutor, it should be noted that this officer is one almost everywhere selected by the people in their sovereign character as electors. In Connecticut the prosecutors are chosen by the judges of the Superior Court, and in New Jersey they are appointed by the Governor. Elsewhere the office is taken as the first stepping-stone toward a political career, where the young lawyer gains experience and forces himself into prominence in his community.²⁶ The definite step of an appointed prosecutor, holding office year after year so long as his services prove satisfactory to the court—the most informed body to make the appointment—is an obvious advance. To this should be added the appointment of an official person to defend certainly at least the indigent prisoner, if not all prisoners. The office of the Public Defender is one of the most important in improving the atmosphere of the criminal trial.²⁷

So far as the police are concerned, both improved training and a higher standard of initial capacity are needed. Mr. Leonard Harrison, in the book on Boston police administration, well states the situation:

²⁶ Moley, *op. cit. supra* note 13, at 58 *et seq.*, and *cf.* Bettman, *loc. cit. supra* note 16.

²⁷ Report on Prosecution, *supra* note 16, at 30-33, 113, 183; Goldman, *The Public Defender* (1917).

"Police work in the final analysis is personal service of a high order, demanding sterling qualities in the individual who performs it. There are few vocations which, if adequately performed, require so much of a man—physical courage, tact, disciplined temper, good judgment, alertness of observation, and specialized knowledge of law and procedure. The public, accustomed to seeing the policeman patrolling his beat with apparently little to do, is likely to lose sight of the high qualities which he may have to call into play at a moment's notice. If he is confronted by a dangerous situation which persons of caution would be inclined to avoid, it is his duty to enter into the thick of it. It may be a family row, a street fight, the pursuit of a desperate criminal, investigation of a burglary alarm, or a serious accident. An alarm is the policeman's cue to go into action. That he is hired to assume these burdens does not detract from the superior qualities which he is called upon to display. He must keep a cool head and take decisive action when trouble arises."²⁸

He goes on to point out the need not only of physical courage, but strong moral fiber, and finally tact and resourcefulness.

And he quotes Colonel Arthur Woods as follows:

"The action he [the patrolman] takes becomes the official action of the organization he represents. If he blunders, the very weight of the authority he represents makes his blunder the more serious. There is no power that can cancel his action, so that he may have another chance."²⁹

As a matter of fact, many of the causes celebres in this country which have been most debated began as cases of diagnosis certainly not over-scientific by the police officers of first instance, from which the organized crime control force of the state then never receded. Civil service appointment of the police, together with proper training schools, is an obvious and most important step.

All these steps are, of course, more or less obvious; and it may be asked, how may they be forwarded greatly, with more rapidity than past attempts at improvements? The conclusion may be suggested that reform will be accelerated the more the federal government takes the leadership in these problems to develop a professional spirit in enforcement officers and to provide widely for proper training. The larger the unit, the greater the possibilities of effective service. Hence we may approve and support the general steps taken by the federal government under the leadership of the Department of Justice in providing for an efficient crime staff in Washington which may well be a model to the states and which, particularly in its Bureau of Identification and its scientific methods of registering finger prints, adds immeasurably to crime detection. One may mourn for the loss of states' rights; but against this purely theo-

²⁸ Harrison, *op. cit. supra* note 25, at 28 and 29.

²⁹ *Id.* at 30.

retical and sentimental loss is the direct gain in the demonstration of efficient and modern methods. Along with this leadership of the central government goes a broadening of activities of the states with such development as state ministries of justice, to co-ordinate all state activities in crime control, and to provide for central direction of police and prosecution. There are dangers, it is true, about a state police force, notably in its potential use for debatable purposes, such as labor difficulties. The development of a state-organized police service completely integrated with local units, however, probably constitutes much less danger than the present trend to the organization of a limited state constabulary as an independent and more or less irresponsible group, without direct affiliation with the ordinary law-enforcing authorities.

It should be noted further that the trend toward federal crime control activities is already well under way.³⁰ It is popular; it seems effective; it cannot be stopped if we would. There is, however, danger that unless we recognize it as a definite movement, to be fostered and developed, its operations may be spasmodic and only harsh and punitive, not correctional and rehabilitative. For example, the juvenile court is perhaps our greatest single contribution to this field of law, and yet there has not been a place made for it in the federal system. Unless such a place is provided, either by direct organization or co-operation and utilization of state agencies, there will be this distinct and disturbing gap.³¹ We are on our way towards unification of crime control activities; we must go forward and not back in this regard.

It is because of the direct emphasis upon and dramatization of this problem of unification of the crime control forces, and notably of the police, made by the Attorney General's Crime Conference held in Washington in December, 1934, that I regard that Conference as real augury of significant promise for the future. I must confess that the advance program of the Conference was somewhat appalling, as it seemed unlikely that three and a half days of steady speech-making would do more than dismay the audience. One came away from the Conference, however, with quite a different feeling. In addition to the individual merits of many of the papers, there

³⁰ An extensive literature is being developed already in regard to the sixteen "crime bills" passed by Congress last spring at the instigation of the Department of Justice. J. P. Chamberlain, *Federal Criminal Statutes, 1934* (1934) 20 A. B. A. J. 501; (1934) 20 A. B. A. J. 396, 397; *Extending Federal Power Over Crime* (1934) 1 Law and Contemporary Problems 399-508. Cf. J. W. Brabner-Smith, *The Commerce Clause and the New Federal Extradition Act* (1934) 29 Ill. L. Rev. 355-360.

³¹ Approach to this co-operation was made by the Act of June 11, 1932, 47 STAT. 301 (1932), 18 U. S. C. A. Supp. §662a (1934), providing that federal juvenile offenders may be surrendered to state authorities where they are subject to state action.

was a noticeable cumulative power in the sheer number and variety of enforcement problems discussed with seriousness and a sincerity and really high degree of scientific impartiality.³² There was thus afforded an effective background for the final action of the Conference, which, in addition to general and detailed recommendations for increasing co-operation between all departments and agencies of federal, state, county, and local law enforcement, specifically voted "that a national, scientific, and educational center be established in Washington, D. C., for the better training of carefully selected personnel in the broad field of criminal law administration and the treatment of crime and criminals."³³ Since the Conference the Attorney General has announced the appointment of a committee which has organized to consider ways and means of carrying into effect the recommendations of the Conference.³⁴

Now I know that all too often honest and sincere recommendations for the establishment of new educational centers come to naught either for lack of financial support or for lack of determined pressure behind them or for both reasons. Often, too, when carried out they are far from their original promise. It would seem, however, that we are justified in looking upon these new plans with a great deal of optimism. The federal government is now showing a willingness to inaugurate new programs, and the interest of the Department of Justice in crime enforcement has met with popular favor. This attitude, backed by the support of the seventy-five or more organizations and the six hundred or more delegates to the Conference, can be capitalized to produce real results. There is a possible danger in a too limited conception of this new scientific crime center. Already the papers have extolled the project as being a "West Point" for the police.³⁵ This is to omit entirely the scientific and research activities which ought to be included in its scope and to emphasize police training only and with too much of

³² A resumé of the Conference is given in (1935) 21 A. B. A. J. 5 *et seq.*; and later issues of the Journal present some of the addresses. Cf. H. S. Cummings, *Co-ordination of Law Enforcement in the Movement Against Crime* (1935) 1 Vital Speeches of the Day 273-275.

³³ (1935) 21 A. B. A. J. 9.

³⁴ Justin Miller, *The Attorney-General's Program for Crime Control* (1935) 21 A. B. A. J. 507.

³⁵ The outline of plans given by Dean Miller, as Chairman of the Attorney General's Advisory Committee on Crime, before the last meeting of the American Bar Association (see note 34, *supra*) seems to suggest a more limited objective than that called for by the resolution of the Conference. He speaks of a proposed new Bureau of Crime Prevention and in addition expresses the hope that the Department may serve as a clearing house for all matters affecting criminal administration. One should of course give due credit for the Committee's probable proper desire to proceed slowly, and not to make premature announcements; it is to be earnestly hoped, however, that it has at heart the establishment of the national scientific and educational center visualized at the Conference.

a turn toward its military features. Police training, as I have indicated, is vitally important, but scientific research is essential for any long-range program. As a matter of fact, once the federal government has shown its support for the general plan, then should follow that decentralization under central direction which seems to be the real solution for governmental administration in this country. The Washington center might well establish academies or institutes at various strategic points in the country—strategic in terms of facilities and personnel for research. Notably these would be set up at universities, although certain of our more advanced penal institutions might well be included. At these different places emphasis could be put on different parts of the criminal administration process. Thus, a university which has already specialized in scientific methods of crime detection³⁶ could continue such work, while others might emphasize psychiatric and medical aspects, penal administration and rehabilitation, and so on. Central direction would be had from Washington, and if certificates of study or even degrees were to be awarded, they could be done publicly by the central board, notwithstanding the fact that the actual studies had taken place elsewhere.

In this paper, in order to achieve some unity and to point out increasing trends towards centralized administration, particularly of prosecution and police, many aspects of crime control are necessarily omitted. Thus, nothing has been said of punishment and reform of the criminal, notwithstanding its importance.³⁷ Again, even the ancient categories of crimes may well deserve re-examination, as shown in Professor Hall's illuminating book on "Theft, Law, and Society," wherein is pointed out the difficulties of classifying auto thefts by gangsters, joy riders, and dealers in stolen automobiles all as a single group or of viewing the various diversified problems in the receiving of stolen goods of different sorts as a single one.³⁸ These and other problems of a complete process of criminal law administration should be a part of the subject-matter to be considered by the new educational center and its subordinate branches. If this center is established, then indeed does there seem real promise of a scientific study of criminal law administration.

³⁶ Such as the Northwestern University, the pioneer in this field.

³⁷ Some of the difficulties of achieving effective results in this field were brought home to me through service on a state commission charged with the duty of investigating jails. The Commission's proposal for the substitution of a modern centralized state jail farm for the old disreputable county jails was strongly supported all over the state, but was rejected by the Legislature in 1935. See Report of the Legislative Commission on Jails (Connecticut, 1932), and Second Report (1934).

³⁸ Hall, *op. cit. supra* note 1, at XVI *et seq.* and *passim*; and cf. Miller on *Criminal Law* (1934).